THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24720 OF 2005

DATED:25.11.2005

Between:

Paruchuri Srinivasa Rao

…Petitioner

And

The Government of A.P., rep. by its

Secretary (Revenue – Land Reforms),

Secretariat Buildings, Hyderabad and others

…Respondents

THE HON'BLE SRI JUSTIE V.V.S.RAO

WRIT PETITION NO.24720 Of 2005

ORDER:

This Writ Petition is filed challenging the constitutional validity of the "explanation" under Section 3(i) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, the Act) and seeking its invalidation on the ground that it violates Articles 14, 16, 21 and second proviso to Article 31-A of the Constitution of India. Alternatively the petitioner prays to direct the respondents to exclude the land admeasuring Acs.3.20 in R.S.No.337/4, Acs.0.78 in R.S.No.337/1, and Acs.0.13½ in R.S.No.337/2 of Mangalpuram Village, Challapalli Mandal, Krishna District (hereafter called, "the declared land") from the holding of the

petitioner in C.C.No.2905/D/75.

The fact of the matter is not in dispute. The petitioner and his mother filed separate declarations under the Act before the Land Reforms Tribunal being C.C.No.2905/D/75 and C.C.No.2948/D/75. The Tribunal determined the surplus of 0.4305 standard holding in C.C.No.2905/D/75 and surplus of 0.3208 standard holding in C.C.No.2948/D/75. These orders were passed by the Tribunal on 11.2.1977. The petitioner and his mother filed appeals before the Land Reforms Appellate Tribunal, Machilipatnam, being L.R.A.Nos.824 of 1977 and 1107 of 1977. By a common order dt.2.11.1978, the Appellate Tribunal held that the petitioner and his mother are non-surplus landholders. While doing so, it appears, the appellate Tribunal accepted the two agreements of sale dt.10.1.1970 and 12.1.1970, which were marked as Exs.A.43 and A.33, under which the declared land was purchased by the petitioner. The Government filed revision before this Court being C.R.P.No.4476 of 1982. By order dt.25.6.1987 this Court allowed the Government's revision and directed the primary Tribunal to include the declared land purchased under Exs.A.33 and A.43 in the holding of the vendors and vendees. The petitioners approached the Supreme Court by filing S.L.P. (C) No.12910 of 1987 and the same was dismissed on 1.12.1994.

Though the proceedings under the Act have become final by reason of the orders of this Court dt.25.6.1987 in C.R.P.No.4476 of 1982, the petitioner filed the present Writ Petition after about twenty years seeking alternative relief and also challenging the explanation to Section 3(i) of the Act.

The case of the petitioner, in brief, as disclosed in the affidavit accompanying the Writ Petition, is as follows. The petitioner purchased the declared land under Exs.A.33 and A.43 prior to coming into force of the Act and therefore these two transactions do not attract the provisions of the Act. However, the petitioner included these lands in the declaration based on the decision of the Supreme Court in **State of Andhra Pradesh v. Mohd. Ashrafuddin.** The third respondent issued notice in Form-VI on 2.7.2005 calling upon the petitioner to surrender the surplus land in an extent of 0.1426 standard holdings. The petitioner sought time to give proper reply. Again third respondent issued notice dt.14.8.2005 calling upon the petitioner to surrender the lands covered by two agreements of sale dt.Exs.A.33 and A.43 and aggrieved by the same, present Writ Petition is filed. The petitioner also contends that the explanation to Section 3(i) of the Act is unconscionable and arbitrary violating Articles 14 and 21 of the Constitution of India.

The learned counsel for the petitioner, Sri G.Krishna Murthy, submits that the declared land having been purchased by the petitioner prior to coming into force of the Act cannot be included in the holding of the petitioner (purchaser) and the Act has no application in relation to these lands. He submits that under mistaken impression it was shown in the declaration and therefore third respondent cannot compel the petitioner to surrender the land.

Learned Assistant Government Pleader for Revenue (General) submits that the provisions of the Act have been upheld by this Court which are also affirmed by the

Supreme Court and therefore this Writ Petition is not maintainable. Secondly he would urge that as held by the Supreme Court in **State of Andhra Pradesh v. Mohd. Ashrafuddin** (supra) and **Yedida Chakradhara Rao v State of A.P.,** the land covered pursuant to agreement of sale has to be included in the "holding" of seller and purchaser, and even if the land purchased by the petitioner under Exs.A.33 and A.43 is covered by agreement of sale prior to coming into force of the Act, the same being in possession of the petitioner, it was rightly included in the holding of the petitioner.

As rightly submitted by the learned Assistant Government Pleader, Sri V.Surya Kiran Kumar, a Full Bench of this Court in **M. Venkata Rao v. State of Andhra Pradesh** considered the constitutional validity of the Act. By unanimous decision, the Full Bench of this Court repelled the challenge to the Act and upheld the Act. The Full Bench also held that the A.P.Land Reforms Act is entitled to protection of Article 31-C of the Constitution of India. A Constitution Bench of the Supreme Court also considered the constitutional validity of A.P.Land Reforms Act in **T. Venkaiah v. State of A.P.** and its validity was upheld. When the provisions of the Act are upheld by a Full Bench of this Court as well as the Supreme Court, is it permissible for the petitioner to challenge a provision of the Act again ? This question is no more *res integra.* A reference may be made to Judgment of the Supreme Court in **D.C. & G. Mills v. Shambhu Nath**.

The provisions of the Industrial Disputes Act, 1947 were challenged in **Niemla Textile Finishing Mills Ltd. v. The 2nd Punjab Industrial Tribunal**. The provision was challenged on the ground that Section 10 of the Act is violative of Article 14 of the Constitution of India. The Supreme Court repelled the contention upholding the provision. Again in **D.C. & G. Mills v. Shambhu Nath** (supra) the provision was challenged. The Supreme Court held that when a provision is upheld by the Court, the same cannot be challenged repeatedly on different ground. The relevant observations of the Supreme Court are as under.

> It is submitted by Mr.Dial that in that decision this Court was only required to consider the objection raised on the score of Article 14 on a ground which is different from the one he would like to take befor4e us. We are, however, unable to accept this submission. **If this Court held S.10 as ultra vires and repelled the objection under Art. 14 of the Constitution it would not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection. It is certainly easy to discover fresh grounds of attack to sustain the same objection, but that cannot be permitted once the law has been laid down by this Court holding that S.10 of the Act does not violate Art. 14 of the Constitution.** The ratio decidendi of Niemla Textile Finishing Mills (supra) will apply while dealing with the objection under Art. 14 of the Constitution in respect of the present reference under S. 10(1)(c) of the Act. The submission of the learned counsel is, therefore, devoid of substance.
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> (emphasis supplied)

Insofar as the alternative relief is concerned, the petitioner is not entitled to

the same. As per Section 3(i) of the Act “holding” means the entire land held by a person as an owner, as a limited owner, as an usufructuary mortgagee, or as a tenant. The explanation to clause (i) of Section 3 further explains that when the land is held by one person in one capacity and by another person in another capacity, such land shall be included in the holding of both such persons. For instance, in a transaction by agreement of sale, the land is deemed to be held by the vendor in one capacity and the vendee in another capacity. In **State of Andhra Pradesh v. Mohd. Ashrafuddin** (supra) interpreting Section 3(i) and its explanation, the Supreme Court held as under.

> The word 'held' is not defined in the Act. We have, therefore, to go by the dictionary meaning of the term. According to Oxford Dictionary 'held' means: to possess; to be the owner or holder or tenant of; keep possession of; occupy. Thus, 'held' connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term 'held' only in the sense of possession. For example, if a land is held by an owner and also by a tenant or by a person in possession pursuant to a contract for sale, the holding will be taken to be the holding of all such persons. It obviously means that an owner who is not in actual possession will also be taken to be a holder of the land. If there was any doubt in this behalf, the same has been dispelled by the explanation attached to the definition of the term 'holding'. The explanation clearly contemplates that the same land can be the holding of two different persons holding the land in two different capacities. The respondent in view of the definition certainly is holding as an owner, although he is not in possession.

In **Yedida Chakradhara Rao v State of A.P.,** (supra), a Constitution Bench of the Supreme Court again considered the question whether the land agreed to be sold by the owner under an agreement of sale and possession of which was delivered in part performance of the agreement of sale but pursuant to which no conveyance has been executed till the relevant date as per the Act, could be included both in the holding of the owner – vendor as well as the purchaser. A question as to whether the land covered by agreement of sale was liable to be included only in the holding of the purchaser for the purposes of the Act also fell for consideration. The Constitution Bench referred to **State of Andhra Pradesh v Mohd.Ashrafuddin** (supra) and **Begulla Bapi Raju v State of Andhra Pradesh**. While affirming the ratio in these two decisions, the Constitution Bench laid down as under. (para 11 of SCC)

> Clauses (i) to (v) of sub-section (i) of Section 3 set out the various capacities in which a person can be said to “hold” land for the purposes of the said Act and among these capacities are “as a usufructuary mortgagee, as a tenant and as one who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract of sale”. The very language of sub-section (i) of Section 3 indicates that land can be held as contemplated in the said sub-section by persons in a number of capacities. The explanation in plain language states that the same land can be held by one person in one capacity and by another person in a different capacity and provides that such land shall be included in the holdings of both such persons. The explanation

> thus clearly contemplates that the same land can be held as contemplated under sub-section (i) by one person as the owner and by another person as his lessee or as a person to whom the owner has delivered possession of the land in part performance of an agreement to sell. On a plain reading of the language used in the Explanation, we find it that it is not possible to accept the submission that only where the land is in possession of a person can that land be regarded as held by him.

It was further held: (para 16 of SCC)

> Where such agreements for sale or of lease are executed in writing and possession is handed over to the purchaser or the lessee, it would be very difficult to show that the transaction was not bona fide although the agreement might well have been executed really with a view to defeat the provisions of the said Act. We cannot lose sight of the fact that Section 3(i) and the Explanation only deals with cases where the transfer of ownership is not complete and the owner does not part completely with his legal interest in the land, so that on the termination of the agreement for sale or agreement of lease without any document being registered, the land would fully revert to the owner. Moreover, in many cases, it was found that the owner of the land himself continued to cultivate the land claiming that he was doing so on behalf of his son who was the lessee or the purchaser under an agreement. In these circumstances, we fail to see any reason to cut down the plain meaning of the provisions of Section 3(i) and the Explanation thereto.

Applying the above ratio, it must be held that even if the petitioner purchased the declared land, under Exs.A.33 and A.43 there is no infirmity in including such land in the holding of the petitioner as he was certainly in possession of the land and comes within the purview of the definition in Section 3(i) of the Act.

As noticed hereinabove, against the orders of the Appellate Tribunal, the Government preferred C.R.P.No.4476 of 1982 which was allowed by this Court on 25.6.1987 directing to include the declared land in the possession of the petitioner, the vendee as well as the vendor. The said order has become final by reason of the order of the Supreme Court dt.1.12.1994 dismissing S.L.P. (C) No.12910 of 1987. In such an event, is it permissible for the petitioner again now to seek a direction to the respondents to exclude the declared land from the holding of the petitioner ? The answer must be emphatically in the negative terms.

It is now well-settled that the jurisdiction under Article 226 of the Constitution of India cannot be exercised to correct the errors in the orders passed by High Court in exercise of other jurisdictions in other fields like civil law, criminal law, tax law etc. It is also well-settled that proceedings under Article 226 of the Constitution are not intended either to correct judicial orders or to treat as curative petitions. This view is well-supported by the decisions of the Supreme Court referred to herein below.

In **Naresh Shridhar Mirajkar v. State of Maharashtra** a Nine-Judge Constitution Bench of the Supreme Court laid down that the High Court in exercise of its Certiorari jurisdiction cannot correct judicial orders passed by High Court or pass orders in relation to proceedings pending before High Court with reference to other jurisdiction. It was observed:

> We have referred to these respective arguments just to indicate the extent of the field, which has been covered by learned counsel who assisted us in dealing with the present petitions. As this Court has frequently emphasized, in dealing with constitutional matters, it is necessary that the decision of the Court should be confined to the narrow points which a particular proceeding raises before it. Often enough, in dealing with the very narrow point raised by a writ petition wider arguments are urged before the Court, but the Court should always be careful not to cover ground which is strictly not relevant for the purpose of deciding the petition before it. Obiter observations and discussion of problems not directly involved in any proceeding should be avoided by courts in dealing with all matters brought before them, but this requirement becomes almost compulsive when the Court is dealing with constitutional matters. That is why we do not propose to deal with the larger issues raised by the learned counsel in the present proceedings, and we wish to confine our decision to the narrow points which these petitions raise.

In **Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat** the above view was reiterated in the following words:

> Even on the assumption that the order of the appellate Court had not merged in the order of the single judge who had disposed of the revision petition, we are of the view that a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under Section 115 of the Code of Civil Procedure. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the Subordinate Court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord finality to its own decisions.

In **Rupa Ashok Hurra v. Ashok Hurra** the Supreme Court considered the scope and power under Articles 32, 132, 133, 134, 136 and 226 of the Constitution of India to entertain a curative petition filed by an aggrieved person seeking, in effect, a re-hearing of a case which was already decided. After elaborate discussion the Supreme Court laid down as under.

> Therefore, on principle, a writ of certiorari cannot be issued to coordinate courts and a fortiorari to superior courts. Thus, a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less to the Supreme Court. Though, the judgments/orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133, and 134 as well as under Article 136 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a High Court. Further, neither a larger bench of the Supreme Court can issue a writ under Article 32 of the Constitution to any other Bench of the Supreme Court. Moreover, Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that

> no judicial order passed by any superior court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. Furthermore, the superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution.

Therefore, if this Writ Petition is entertained, it amounts to disturbing the finality of the orders of this Court in C.R.P.No.4476 of 1982. The Writ Petition is therefore wholly misconceived.

The Writ Petition is accordingly dismissed *in limini*.

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(V.V.S.RAO, J)

25.11.2005

bnr/pln

Note: LR COPY BE MARKED.

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